STATE OF MICHIGAN

COURT OF APPEALS

JOHN M. CHASE, JR. and MELVIN D. JEFFERSON as Personal Representatives for the Estate of ROSA LOUISE PARKS,

Petitioners-Appellees,

v

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF-DEVELOPMENT and ELAINE STEELE,

Respondents-Appellants,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHIRIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA DARCELLE MCCAULEY, SUSAN DIANE MCCAULEY, SHIRLEY MCCAULEY JENKINS, SHEILA GAYE KEYS, RICHARD MCCAULEY, WILLIAM MCCAULEY, CHERYL MARGUARITE MCCAULEY, SYLVESTER MCCAULEY III, LONNIE MCCAULEY, and URANA MCCAULEY,

Respondents-Appellees.

UNPUBLISHED
April 19, 2011

No. 293897
Wayne Probate Court
LC No. 2005-698046-DE

JOHN M. CHASE, JR. and MELVIN D. JEFFERSON as Trustees for the ROSA LOUISE PARKS TRUST,

Petitioners-Appellees,

v

No. 293899
Wayne Probate Court

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF-DEVELOPMENT and ELAINE STEELE,

Respondents-Appellants,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHIRIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA DARCELLE MCCAULEY, SUSAN DIANE MCCAULEY, SHIRLEY MCCAULEY JENKINS, SHEILA GAYE KEYS, RICHARD MCCAULEY, WILLIAM MCCAULEY, CHERYL MARGUARITE MCCAULEY, SYLVESTER MCCAULEY III, LONNIE MCCAULEY, and URANA MCCAULEY,

Respondents-Appellees.

LC No. 2006-707697-TV

JOHN M. CHASE, JR. and MELVIN D. JEFFERSON as Trustees for the ROSA LOUISE PARKS TRUST,

Petitioners-Appellees,

v

No. 296294
Wayne Probate Court
LC No. 2006-707697-TV

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF-DEVELOPMENT and ELAINE STEELE,

Respondents-Appellants,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHIRIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA DARCELLE MCCAULEY, SUSAN DIANE MCCAULEY,

SHIRLEY MCCAULEY JENKINS, SHEILA GAYE KEYS, RICHARD MCCAULEY, WILLIAM MCCAULEY, CHERYL MARGUARITE MCCAULEY, SYLVESTER MCCAULEY III, LONNIE MCCAULEY, and URANA MCCAULEY,

Respondents-Appellees.

JOHN M. CHASE, JR. and MELVIN D. JEFFERSON as Personal Representatives for the Estate of ROSA LOUISE PARKS,

Petitioners-Appellees,

v

No. 296295
Wayne Probate Court
LC No. 2005-698046-DE

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF-DEVELOPMENT and ELAINE STEELE,

Respondents-Appellants,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHIRIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA DARCELLE MCCAULEY, SUSAN DIANE MCCAULEY, SHIRLEY MCCAULEY JENKINS, SHEILA GAYE KEYS, RICHARD MCCAULEY, WILLIAM MCCAULEY, CHERYL MARGUARITE MCCAULEY, SYLVESTER MCCAULEY III, LONNIE MCCAULEY, and URANA MCCAULEY,

Respondents-Appellees.

Before: DONOFRIO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

In these consolidated appeals, respondents Elaine Steele and the Raymond and Rosa Parks Institute for Self-Development (the Institute), appeal as of right from orders entered by the probate court on August 10, 2009 and January 13, 2010. We affirm.

This matter has been pending in the probate court since 2005, and began as a will contest and trust dispute with Steele and the Institute on one side and the heirs-at-law on the other side. In 2006, petitioners John M. Chase, Jr. and Melvin D. Jefferson were appointed by the probate court as successor co-trustees of the trust and co-personal representatives of the estate. Just prior to trial commencing, however, a settlement agreement was reached between the parties on February 16, 2007, and approved by the probate court on March 12, 2007. The settlement agreement contained a confidentiality provision that included a forfeiture clause.

Various proceedings followed, including an appeal by Steele and the Institute primarily challenging an award of attorney fees to petitioners Chase and Jefferson. See *In re Estate of Rosa Louise Parks*, unpublished opinion per curiam of the Court of Appeals, issued March 19, 2009 (Docket Nos. 281203, 281438, 281204, 281437). Following the resolution of the appeal, Steele and the Institute alleged in the probate court that the heirs-at-law, who were parties to the settlement agreement, violated the confidentiality provision and filed a motion to compel arbitration. The heirs-at-law, and petitioners Chase and Jefferson, responded to the motion denying the allegation, and further argued that it was the attorney for Steele and the Institute who, in fact, violated the confidentiality provision during oral arguments before this Court by disclosing terms of the settlement in open court.

Thereafter, petitioners Chase and Jefferson filed various motions and petitions in the probate court, including (1) a motion for sanctions against Steele and the Institute, requesting attorney fees incurred in defending the improperly filed motion to compel arbitration, (2) a petition to cy pres Steele and the Institute's share of proceeds arising from the settlement agreement because of their breach of its confidentiality provision, consistent with its forfeiture clause, and (3) a petition requesting that Steele and the Institute pay over proceeds received in violation of the settlement agreement. Steele and the Institute opposed the motion and objected to the petitions. They also filed a jury demand. Petitioners and the heirs-at-law filed objections to the jury demand. The probate court conducted arguments on the motion and petitions.

On August 10, 2009, the probate court entered its order and opinion finding, in part, that Steele and the Institute's attorney violated the confidentiality provision of the settlement agreement, triggering its forfeiture clause. On January 13, 2010, the probate court entered its order and opinion finding, in part, that Steele and the Institute were individually liable on a judgment in the amount of $120,075.86 for proceeds previously paid to them, as well as for $17,227.93 in administration costs and attorney fees, which had been previously ordered against their share of the proceeds. The court also clarified its order of forfeiture, holding that all assets were forfeited, including all property received by Steele and the Institute under the settlement agreement.

On appeal, Steele and the Institute first argue that the probate court's "sua sponte summary order" of forfeiture was made in violation of fundamental fairness and constitutional due process because it was entered on the initial pleadings and without discovery, evidence, dispositive motion, or trial. We disagree. The determination whether a party has been afforded due process is a question of law subject to de novo review on appeal. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005). However, appeals from a probate court decision are on the record, not de novo. MCL 600.866(1); MCL 700.1305; MCR 5.802(B)(1). The probate court's factual findings are reviewed for clear error, and its dispositional rulings are reviewed for an abuse of discretion. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008).

Generally, due process requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker. *Reed*, 265 Mich App at 159; *In re Adams Estate*, 257 Mich App 230, 233-234; 667 NW2d 904 (2003). Underlying the right of due process are principles of fair play and fundamental fairness. *Id*. Steele and the Institute argue that they were denied due process because they did not know that the probate court was considering granting the petition requesting forfeiture without additional proceedings. Steele and the Institute characterize the probate court's actions as rendering "summary disposition, on its own motion, without prior notice to a party and an opportunity to be heard."

However, a petition requesting forfeiture was filed. See MCL 700.7208. A "petition" is a "written request to the court for an order after notice." MCL 700.1106(p). That petition was supported by evidence. Steele and the Institute had notice of the petition and an opportunity to object to the petition, as well as its supporting evidence. And the probate court held a hearing on the petition before rendering its opinion. Steele and the Institute do not argue that they lacked notice of the petition or an impartial decisionmaker; rather, it appears that they claim to have been denied an opportunity to be heard in a meaningful manner because their detailed objection to the petition was "virtually . . . ignored by the probate court." This argument is unavailing. Steele and the Institute have failed to cite any persuasive legal support for their claim that the probate court was not authorized—under principles of fundamental fairness and due process—to grant forfeiture, as requested by the petition, after notice was received, objections were raised, and a hearing was conducted. The probate court is not required to unnecessarily prolong proceedings. See *Reed*, 265 Mich App 159; *In re Adams Estate*, 257 Mich App at 234. Accordingly, we likewise reject the claim that the probate court granted "summary disposition, on its own motion." The probate court is vested with exclusive legal and equitable jurisdiction over proceedings involving the internal affairs of an estate, estate administration, settlement, and distribution, as well as the declaration of rights that involve an estate, devisee, heir, or fiduciary. MCL 700.1302(a)(i)-(iii). Further, the probate court has exclusive legal and equitable jurisdiction over a proceeding that concerns the internal affairs or settlement of a trust, the administration and distribution of a trust, and the declaration of rights that involve a trust, trustee, or trust beneficiary. MCL 700.1302(b). This dispute involving the settlement agreement, which set forth the distribution of estate and trust assets, clearly involved these matters.

Next, Steele and the Institute argue that petitioners Chase and Jefferson lacked standing to assert a breach of the confidentiality provision because they were not parties to the settlement agreement. This issue was not set forth in their statement of questions involved in violation of MCR 7.212(C)(5). Ordinarily, an issue not contained in the statement of questions presented is deemed waived or abandoned on appeal. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). However, because sufficient facts are available and the assertion involves a question of law, we will consider the issue.

It is undisputed that, in 2006, petitioners Chase and Jefferson were appointed successor co-trustees of the trust at issue and co-personal representatives of the estate at issue. They remained in that capacity at all relevant times. Thus, pursuant to MCL 700.1104(e), petitioners were fiduciaries. In their brief on appeal, Steele and the Institute fail to acknowledge the fiduciary capacities of petitioners Chase and Jefferson and the impact such designation has on a standing analysis. In short, pursuant to MCL 700.7817(x), a trustee has the power to "prosecute, defend, arbitrate, settle, release, compromise, or agree to indemnify an action, claim, or proceeding in any jurisdiction or under an alternative dispute resolution procedure." See, also, MCL 700.7203. MCL 700.3703(3) also confers standing on a personal representative. Accordingly, petitioners Chase and Jefferson had standing, in their fiduciary capacities, to file a petition in the probate court seeking enforcement of the settlement agreement involving the estate and trust until discharged as fiduciaries and relieved of their duties.

Next, Steele and the Institute argue that the issue whether there was a breach of the settlement agreement should have been submitted to binding arbitration as set forth in the settlement agreement. Again, this issue was not set forth in their statement of questions involved in violation of MCR 7.212(C)(5). Ordinarily, an issue not contained in the statement of questions presented is deemed waived or abandoned on appeal. *Caldwell*, 240 Mich App at 132. In any case, were we to consider the issue, we would conclude that it is without merit.

The first part of the three-part test for ascertaining the arbitrability of a particular issue is whether there is an arbitration agreement in a contract between the parties. See *Detroit Auto Inter-Ins Exch v Reck*, 90 Mich App 286, 290; 282 NW2d 292 (1979). The petition seeking forfeiture for violation of the terms of the settlement agreement was brought by petitioners Chase and Jefferson, and they were not "parties" to the settlement agreement, as Steele and the Institute admit above. That is, petitioners Chase and Jefferson were not subject to the arbitration provision—which begins "[t]he parties agree"—set forth in the settlement agreement. As discussed above, petitioners Chase and Jefferson were acting in their fiduciary capacities when they filed their petition with the probate court. Accordingly, this issue is without merit.

Next, Steele and the Institute argue that the probate court erred in concluding that there was an unauthorized disclosure in breach of the confidentiality provision of the settlement agreement. Again, this issue was not set forth in their statement of questions involved in violation of MCR 7.212(C)(5). Ordinarily, an issue not contained in the statement of questions presented is deemed waived or abandoned on appeal. *Caldwell*, 240 Mich App at 132. Nonetheless, we will address the issue, reviewing the probate court's factual findings for clear error, and its dispositional rulings for an abuse of discretion. *In re Temple Marital Trust*, 278 Mich App at 128.

The confidentiality provision provided that the "terms of the settlement shall be kept in confidence . . . and not released or disclosed . . . ." Steele and the Institute first argue that there was no disclosure of "any actual term of the settlement agreement" because the disclosure referred to expenses, not proceeds. After review of the disputed statements which are contained in the transcript of the oral argument proceeding before this Court, we disagree. We are constrained by that interest of confidentiality to merely state that the settlement agreement provisions at issue included the word "net" which clearly contemplates expenses, as well as proceeds. Second, Steele and the Institute claim that there was no "disclosure" because there was no evidence that any unauthorized person was present at the time of the disclosure. To the contrary, the disclosure was made in open court and there was evidence that other persons were present in the courtroom at the time of the disclosure, including but not limited to a named newspaper reporter. Thus, we agree with the probate court's factual findings and conclusion.

Next, Steele and the Institute argue that the confidentiality provision and forfeiture clause contained within that provision of the settlement agreement are ambiguous. Again, this issue was not set forth in their statement of questions involved in violation of MCR 7.212(C)(5). Ordinarily, an issue not contained in the statement of questions presented is deemed waived or abandoned on appeal. *Caldwell*, 240 Mich App at 132. In this case, we will consider the issue.

Issues of contract interpretation, including whether contract language is ambiguous, are questions of law reviewed de novo on appeal. *Farm Bureau Mut Ins Co of MI v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999). However, appeals from a probate court decision are on the record, not de novo. MCL 600.866(1); MCL 700.1305; MCR 5.802(B)(1). The probate court's factual findings are reviewed for clear error, and its dispositional rulings are reviewed for an abuse of discretion. *In re Temple Marital Trust*, 278 Mich App at 128.

"The primary goal in the construction or interpretation of any contract is to honor the intent of the parties." *Rasheed v Chrysler Corp*, 445 Mich 109, 127 n 28; 517 NW2d 19 (1994). The intent of the parties is gleaned from the words used in the instrument. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). "If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous." *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997). The language of a contract is given its ordinary and plain meaning. *Id*. When a contract is unambiguous, it must be enforced according to its terms. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51-52; 664 NW2d 776 (2003).

Steele and the Institute argue that the confidentiality provision is "highly ambiguous" in that it is unclear as to which "terms" were not to be disclosed. However, the provision plainly states that the "terms" to be kept in confidence were the "terms of this settlement." According to the dictionary, "terms" are "conditions or stipulations limiting what is proposed to be granted or done." *The Random House College Dictionary* (1988). In this case, the disclosure clearly involved "terms of this settlement" in that the disclosure referenced the division of the estate and trust assets as set forth in the settlement agreement.

Steele and the Institute likewise argue that the forfeiture clause is ambiguous because it "fails to state with sufficient precision who is to suffer the sanction of forfeiture" and it is unclear what "compensation" means. Again, we disagree. First, the settlement agreement plainly states

that it is binding on the parties, their attorneys, the Institute's Board, the heirs and their spouses, as well as the successors and assigns of the parties. Those parties and persons receiving estate and trust assets under the settlement agreement—including Steele and the Institute—clearly were intended to "suffer the sanction of forfeiture" for its breach.

Second, the ordinary and plain meaning of the word "compensation" is "something given or received as an equivalent for services, debt, loss, injury, suffering, lack, etc." *The Random House College Dictionary* (1988). Here, the settlement agreement was entered into for the purpose of ending the will contest and trust dispute. Toward that end, the parties agreed to a certain division of the estate and trust assets, which included certain rights, property, and monetary entitlements, as a compromise settlement. Thus, the division of estate and trust assets that each party received, in exchange for their agreement to settle the dispute, was "compensation," i.e., something received as an equivalent for their claim to the estate and trust. Thus, the forfeiture clause was not ambiguous.

Next, Steele and the Institute argue that the forfeiture clause contained within the confidentiality provision is "an unenforceable penalty." Again, this issue was not set forth in their statement of questions involved in violation of MCR 7.212(C)(5). Ordinarily, an issue not contained in the statement of questions presented is deemed waived or abandoned on appeal. *Caldwell*, 240 Mich App at 132. In this case, we will consider the issue.

Michigan has long recognized the bedrock principle of contract law that competent parties are free to contract for whatever terms they wish and courts are to enforce the agreement as written unless the contract is in violation of law or public policy. *Wilkie*, 469 Mich at 62; *Burkhardt v Bailey*, 260 Mich App 636, 656-657; 680 NW2d 453 (2004). Here, the penalty of forfeiture for breach of the confidentiality provision was unambiguous and the parties, including Steele and the Institute, agreed to include that clause in their settlement agreement. The inclusion of that clause was not in violation of the law or public policy; thus, it must be enforced by the courts.

In summary, the challenged holdings of the probate court's August 10, 2009 order are affirmed.

Docket Nos. 296294 & 296295
January 13, 2010 Order

Steele and the Institute first argue that the probate court erred in entering a judgment against them in the amount of $120,075.86 because the judgment was entered upon a verbal request without pleadings, discovery, evidence, dispositive motion, or trial in clear violation of fundamental fairness, constitutional due process, and basic court rules. We disagree. The determination whether a party has been afforded due process is a question of law subject to de novo review on appeal. *Reed*, 265 Mich App at 157. However, appeals from a probate court decision are on the record, not de novo. MCL 600.866(1); MCL 700.1305; MCR 5.802(B)(1). The probate court's factual findings are reviewed for clear error, and its dispositional rulings are reviewed for an abuse of discretion. *In re Temple Marital Trust*, 278 Mich App at 128.

As discussed above, due process requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker. *Reed*, 265 Mich App at 159; *In re Adams Estate*, 257 Mich App at 233-234. It appears that Steele and the Institute are arguing that they did not have notice that petitioners were requesting a judgment in the amount of $120,075.86. Again, Steele and the Institute characterize the probate court's actions as a "sua sponte grant of summary disposition." However, petitioners filed petitions regarding this matter, including on May 28, 2009. Steele and the Institute filed objections, and oral arguments were held on June 10, 2009. Thereafter the probate court notified the parties that there had been a malfunction of the court's recording equipment, and requested that counsel provide briefs regarding the proceedings. On June 26, 2006, counsel for petitioners Chase and Jefferson filed a summary of the oral argument, which included their request for $120,075.86 along with their supportive reasoning. On July 16, 2009, Steele and the Institute filed their summary of the oral argument and denied that petitioners were entitled to those funds. On August 10, 2009, the probate court issued its opinion and order holding, in part, that petitioners' request was premature at that point, but that they were entitled to a lien in accordance with the settlement agreement.

On November 2, 2009, petitioners Chase and Jefferson filed a petition for enforcement of the court's previous orders, including the August 2009 court order. Steele and the Institute filed an objection to the petition. On December 2, 2009, the probate court held a hearing on the petition. During that hearing, petitioners Chase and Jefferson explained, again, why they were entitled to recover $120,075.86 from Steele and the Institute. Further, in light of the lien in their favor, they requested that the previous order be converted into a judgment. On December 7, 2009, petitioners filed an addendum to their petition, confirming their request and explaining their entitlement to a judgment in the amount of $120,075.86. On January 13, 2010, the probate court rendered its opinion and order, granting petitioners' request for a judgment in the amount of $120,075.86, with a well-written and lengthy explanation.

In light of this extensive procedural background, we are not persuaded that Steele and the Institute were denied due process as they have claimed. Clearly, the probate court did not "sua sponte" grant "summary disposition." And the lien was not "magically" converted into a judgment as they argue. Because Steele and the Institute forfeited their entitlements under the settlement agreement by violating the confidentiality provision, they did not have trust or estate assets to "lien."

Next, Steele and the Institute argue that the probate court erred in entering a judgment against them for $17,227.93 in payment of fiduciary and attorney fees. Although it is unclear, it appears that Steele and the Institute are arguing that the probate court should not have entered a judgment against Steele and the Institute in their individual capacities because the court's previous orders had apportioned attorney fees against them as "Estate beneficiaries." They argue that, "in a manner similar to the probate court's 'conversion' of Appellees' lien into a judgment for $120,000, the probate court has magically 'converted' an apportionment order against Appellants' share of the estate to a judgment against the Appellants in their individual capacities." However, on January 13, 2010, when the court entered the disputed judgment against Steele and the Institute, they were no longer "estate beneficiaries" and thus were no longer entitled to a "share of the estate." By order entered August 10, 2009, Steele and the

Institute were found to have forfeited their share of the estate and trust assets. Accordingly, this issue is without merit.

Further, to the extent that Steele and the Institute may be arguing that fees and costs were improperly imposed against them when they were beneficiaries, they have failed to properly present this issue for our review. For instance, there is no evidence that this issue has been properly preserved in the probate court and they have failed to set forth necessary procedural facts, with appropriate references to the record evidence. See MCR 7.212(C)(7).

Finally, Steele and the Institute argue that the probate court erred in entering its forfeiture order against them because this relief was in excess of the relief provided in the forfeiture clause. It appears that Steele and the Institute are arguing that certain property rights should not have been deemed forfeited because they do not "comprise compensation under the settlement agreement." Steele and the Institute claim that the assignment of rights at issue "was never challenged by the heirs" and "the [] property rights were owned by the Institute long before entry of the settlement." They claim that the rights were not subject to administration in the probate court. However, review of the settlement agreement belies that claim because it states "WHEREAS, the Heirs have challenged the Will, the Trust, and the Assignment, on various grounds . . . ."

Further, the phrase at issue is "shall forfeit all compensation provided herein." As discussed above, the division of estate and trust assets that each party received, in exchange for their agreement to settle the dispute, was "compensation," i.e., something received as an equivalent for their claim to the estate and trust. The property rights at issue, therefore, come within the common meaning of "all compensation," as held by the probate court.

In summary, the January 13, 2010 order of the probate court is affirmed.

Affirmed. Pursuant to MCR 7.219(A), Steele and the Institute are liable for costs.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens